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14 UNITED STATES OF AMERICA

15 UNITED STATES DISTRICT COURT

16 FOR THE CENTRAL DISTRICT OF CALIFORNIA

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 v.

20 JERRY NEHL BOYLAN,

21 Defendant.

CR No. 22-482-GW

MOTION FOR A FINDING OF
LEGISLATIVE FACT THAT THE ALLEGED
LOCUS OF THE SEAMAN'S MANSLAUGHTER
OFFENSE IS WITHIN THE ADMIRALTY
JURISDICTION OF THE UNITED STATES;
EXHIBIT 1

Hearing Date: Oct. 23, 2023
Hearing Time: 8:00 a.m.

24 Plaintiff United States of America, by and through its counsel
25 of record, the United States Attorney for the Central District of
26 California and Assistant United States Attorneys Mark A. Williams,
27 Matthew W. O'Brien, Brian R. Faerstein, and Juan M. Rodriguez, hereby
28 files this Motion for a Finding of Legislative Fact that the Alleged

1 Locus of the Seaman's Manslaughter Offense is within the Admiralty
2 Jurisdiction of the United States.

3 This Motion is based upon the attached memorandum of points and
4 authorities, the files and records in this case, the attached
5 exhibit, and such further evidence and argument as the Court may
6 permit.

7 Dated: October 13, 2023

Respectfully submitted,

8 E. MARTIN ESTRADA
United States Attorney

9 MACK E. JENKINS
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant JERRY NEHL BOYLAN ("defendant") will soon stand trial on the Indictment alleging that he committed seaman's manslaughter "within the Central District of California and the admiralty jurisdiction of the United States." The crime in question occurred in the Pacific Ocean off the coast of Santa Cruz Island, an area clearly within the admiralty jurisdiction of the United States.

The seaman's manslaughter statute, 18 U.S.C. § 1115, does not specify whether it was enacted pursuant to Congress's authority to create and modify admiralty law or its power under the Commerce Clause. However, at least two federal circuits have held that the statute and its reach are defined by admiralty law. United States v. McKee, 68 F.4th 1100, 1108 (8th Cir. 2023); United States v. Allied Towing Corp., 602 F.2d 612, 615 (4th Cir. 1979). The government therefore alleged admiralty jurisdiction in the indictment and proceeds on that basis.

Proving the jurisdictional element of defendant's offense entails a bifurcated inquiry involving both a question of law and a question of fact. The Court decides the legal question of whether the alleged locus of the offense falls within federal jurisdiction, and the jury decides the factual question of whether the alleged crime occurred within that federal locus. Here, the alleged locus of the offense is the marine region depicted in Exhibit 1, attached hereto.¹

¹ Although much larger regions of the Pacific Ocean could also fall within federal admiralty jurisdiction given the extensive shipping, diving, fishing, and other commercial activities occurring
(footnote cont'd on next page)

Admiralty jurisdiction extends “to those waters traversed or susceptible of being traversed by commercial craft.” Adams v. Montana Power Co., 528 F.2d 437, 439 (9th Cir. 1975). Here, the region of the Pacific Ocean in question is used by a variety of commercial vessels, ranging from large international container ships to cruise ships to commercial dive boats like the *Conception*.

Accordingly, this Court should make a pre-trial finding of legislative fact that the marine area depicted in Exhibit 1 is within the admiralty jurisdiction of the United States.²

II. ARGUMENT

A. The Court should decide jurisdictional status before trial

1. Jurisdiction is a question of law for the Court, not for the jury

Whether the United States has jurisdiction over the area where an offense occurred “can and should be decided by the trial court as a preliminary question of law”; by contrast, whether the instant offense took place in that area is the “factual issue” that “must be decided by the jury.” United States v. Smith, 282 F.3d 758, 767 (9th Cir. 2002); see also United States v. Gipe, 672 F.2d 777, 779 (9th Cir. 1982) (“the court may determine as a matter of law the existence of federal jurisdiction over the geographic area, but the locus of the offense within that area is an issue for the trier of fact”); Davis v. United States, 185 F.2d 938, 943 (9th Cir. 1950) (“Whether

throughout the navigable ocean, the government is limiting its jurisdictional argument in this case to the marine region identified on Exhibit 1.

² On October 6 and 10, 2023, the government met and conferred with Deputy Federal Public Defender Joshua Weiss regarding the issues raised in this Motion. DFPD Weiss indicated that he was not prepared to agree that the Court should make a pre-trial finding of legislative fact regarding admiralty jurisdiction.

1 its geographical jurisdiction covers the place of occurrence under
2 consideration is a question within the power of the court to
3 determine, and this is true in a criminal as well as a civil case.”).

4 Determining the existence of federal jurisdiction is purely a
5 legal question for the Court, as it “turn[s] on a fixed legal status
6 that does not change from case to case and involve[es] consideration
7 of source materials (such as deeds, statutes, and treaties) that
8 judges are better suited to evaluate than juries.” United States v.
9 Davis, 726 F.3d 357, 368 (2d Cir. 2013). This purely legal question
10 is ill-suited for a jury, as “[e]ntrusting such a nuanced and
11 cumbersome legal exercise to the trier of fact would leave open the
12 distinct possibility of conflicting decisions as to federal
13 jurisdiction over an identical parcel of property—a status which by
14 its nature either exists or doesn’t exist.” United States v.
15 Johnson, No. 3:17-CR-136-HEH, 2018 WL 1023355, at *2 (E.D. Va. Feb.
16 22, 2018). Such discrepancies would be illogical, because “[w]hether
17 a particular facility is within federal jurisdiction is a universal
18 truth.” United States v. Love, 20 F.4th 407, 412 (8th Cir. 2021).

19 The Ninth Circuit has repeatedly pronounced that the existence
20 of federal jurisdiction is a question of law for the district court,
21 and the locus of the offense within that area is an issue for the
22 jury. See, e.g., United States v. Warren, 984 F.2d 325, 327 (9th
23 Cir. 1993) (whether an army base is within federal jurisdiction may
24 be determined by the district court “as a matter of law,” and whether
25 an assault occurred on the base is a question of fact for the jury).
26 Other cases are in accord with this distinction. United States v.
27 Sohappy, 770 F.2d 816, 822 & n.6 (9th Cir. 1985) (whether land lies
28 within Indian country “is a matter for the judge”; the jury “need

1 only find" that the offense was committed on that land) (citing Gipe,
2 672 F.2d at 779); accord United States v. Roberts, 185 F.3d 1125,
3 1139-40 (10th Cir. 1999); United States v. Stands, 105 F.3d 1565,
4 1575-76 (8th Cir. 1997); United States v. Cook, 922 F.2d 1026, 1031-
5 32 (2d Cir. 1991); United States v. Levesque, 681 F.2d 75, 78 (1st
6 Cir. 1982).³

7 Supreme Court precedent supports that approach. In McGirt v.
8 Oklahoma, 140 S. Ct. 2452 (2020), the Court conducted a survey of
9 historical records to determine whether the defendant had committed
10 his crimes within Indian country. Id. at 2460-67. If the
11 geographical and jurisdictional scope of Indian territory had been a
12 question of fact that had to go to a jury, the Supreme Court could
13 not have undertaken its analysis on appeal. McGirt thus confirms
14 that jurisdiction is a legal question answered by legislative facts.
15 See also Bowen v. Johnston, 306 U.S. 19, 28-30 (1939) (examining
16 cession statutes and administrative opinion letter to conclude that
17 land was within federal territorial jurisdiction).

18 The legal determination of jurisdiction also applies to crimes
19 in federal prisons. In United States v. Mujahid, 799 F.3d 1228 (9th
20 Cir. 2015), where the defendant committed sexual assaults at a state
21 facility housing federal inmates, the existence of federal
22 jurisdiction—based on an uncontested contract with the state—was a
23 question of law. Id. at 1236-38; accord United States v. Hernandez-
24 Fundora, 58 F.3d 802, 812 (2d Cir. 1995) ("[T]he district court was

25
26 ³ A bifurcated analysis similarly governs jurisdiction where a
27 defendant contends he is not an Indian: whether a tribe is federally
28 recognized "is a question of law to be decided by the judge"; whether
the defendant was a member of that tribe is a question for the jury.
United States v. Zepeda, 792 F.3d 1103, 1114 (9th Cir. 2015) (en
banc).

1 entitled to determine that [the prison] falls within the special
2 maritime and territorial jurisdiction of the United States, and to
3 remove that issue from consideration by the jury.").

4 The Ninth Circuit's model instruction for involuntary
5 manslaughter tracks this accepted bifurcated inquiry: the Court
6 identifies the place of federal jurisdiction, and the jury determines
7 whether the assault occurred there. Ninth Cir. Model Crim. Jury
8 Instr. 16.4. The Comment to the Ninth Circuit Pattern Jury
9 Instructions for involuntary manslaughter adopts this clear,
10 practical, easy-to-apply distinction between what is a question of
11 fact and what is a question of law: "As to the sixth element, whether
12 the crime alleged occurred at a particular location is a question of
13 fact. Whether the location is within the special maritime and
14 territorial jurisdiction of the United States or a federal prison is
15 a question of law. See United States v. Gipe, 672 F.2d 777, 779 (9th
16 Cir. 1982)." Id., Comment.

17 The model instruction for manslaughter contains a similar
18 comment that cites the same Ninth Circuit precedents and endorses the
19 same bifurcated analysis: "As to the third element, whether the crime
20 alleged occurred at a particular location is a question of fact.
21 United States v. Warren, 984 F.3d 325, 327 (9th Cir. 1993). Whether
22 the location is within the special maritime and territorial
23 jurisdiction of the United States, or a federal prison is a question
24 of law. See United States v. Gipe, 672 F.2d 777, 779 (9th Cir.
25 1982)." Ninth Cir. Model Crim. Jury Instr. 16.3, Comment.

26 //

27 //

2. The jurisdictional status of a place is a legislative fact

Questions of “geography and jurisdiction,” including “whether a particular plot of land falls within the special maritime and territorial jurisdiction of the United States,” are answered by “legislative facts,” which are “facts or pronouncements that do not change from case to case but apply universally.” Davis, 726 F.3d at 366-68. Those are distinguished from “adjudicative facts,” which involve case-by-case determinations and may only be judicially noticed within the strictures of Federal Rule of Evidence 201. Id. at 366. Legislative facts are conclusively noticeable; Rule 201 is “inapplicable.” Id. at 366-68; see also Owino v. Holder, 771 F.3d 527, 534 n.4 (9th Cir. 2014) (courts “may consider” legislative facts “without regard to Rule 201”); Marshall v. Sawyer, 365 F.2d 105, 111 (9th Cir. 1966) (endorsing distinction between adjudicative and legislative facts). Adjudicative facts are facts “developed in a particular case,” Davis, 726 F.3d at 366, “usually answering the questions of who did what, where, when, how, why, with what motive or intent—the types of “facts that go to a jury in a jury case, or to the factfinder in a bench trial.” Marshall, 365 F.2d at 111. “Legislative facts,” by contrast, “do not usually concern [only] the immediate parties but are general facts which help the tribunal decide questions of law, policy, and discretion.” Id. at 111.

Supreme Court precedent confirms this distinction. “Who is the sovereign, de jure or de facto, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and

1 subjects of that government." Jones v. United States, 137 U.S. 202,
2 212 (1890). Courts are therefore "bound to take judicial notice of
3 the territorial extent of the jurisdiction exercised by the
4 government whose laws they administer" based on "public acts of the
5 legislature and executive," even when "those acts are not formally
6 put in evidence." Id. at 214.

7 Consistent with these precedents, the existence of federal
8 admiralty jurisdiction over a region of the Pacific Ocean is a
9 legislative fact that this Court can and should find as a matter of
10 law. See Hernandez-Fundora, 58 F.3d at 812 (the jurisdictional
11 status of a federal prison is "premised upon a determination of
12 legislative, rather than adjudicative, facts to which Rule 201 . . .
13 [is] inapplicable").

14 **B. The location of the seaman's manslaughter offense is within**
15 **the admiralty jurisdiction of the United States**

16 1. The Pacific Ocean is navigable and used for commercial
17 activities

18 The *Conception* caught fire while anchored approximately 1/4 mile
19 north of Santa Cruz Island in the Pacific Ocean. This location is
20 deemed to be the place where the seaman's manslaughter offense
21 occurred because "[i]n all cases of murder or manslaughter, the
22 offense shall be deemed to have been committed at the place where the
23 injury was inflicted, or the poison administered or other means
24 employed which caused the death, without regard to the place where
25 the death occurs." 18 U.S.C. § 3236.

26 This marine region is unquestionably within the admiralty
27 jurisdiction of the United States. Federal courts have general
28 subject matter jurisdiction in admiralty cases involving waters that
are navigable in fact. Const. Art. III, § 2; Kaiser Aetna v. United

1 States, 444 U.S. 164, 171-72 (1979). The Ninth Circuit has broadly
2 held that navigability for purposes of admiralty jurisdiction
3 includes "those waters traversed or susceptible of being traversed by
4 commercial craft." Adams, 528 F.2d at 439. Accordingly, the Circuit
5 has even extended admiralty jurisdiction to Mission Bay, a small body
6 of water in San Diego that is limited to personal watercraft (like
7 jet skis) and that is adjacent to the Pacific Ocean. In re Mission
8 Bay Jet Sports LLC, 570 F.3d 1124, 1127 (9th Cir. 2009) ("We conclude
9 that the waters where the accident occurred, being subject to tidal
10 influence, meet the definition of 'navigable waters' for purposes of
11 admiralty jurisdiction.").

12 Here, the region identified in Exhibit 1 is undoubtedly
13 "susceptible of being traversed by commercial craft." Adams, 528
14 F.2d at 439. The *Conception* itself was a commercial boat that took
15 dozens of paying passengers on dive trips to the Channel Islands,
16 including around Santa Cruz Island (where the fire occurred).
17 Witnesses at trial will also testify that this area of the Pacific
18 Ocean is used by large commercial ships transporting international
19 cargo. Moreover, large cruise ships regularly transit this area.⁴
20 This Court should therefore rule that the marine region identified in
21 Exhibit 1 is within the admiralty jurisdiction of the United States.

22 2. Concurrent state jurisdiction does not impact this
23 analysis

24 Although the State of California may also have some
25 jurisdictional rights to certain areas within the Pacific Ocean, that
26 jurisdiction is not exclusive. The Fourth Circuit conclusively
27

28 ⁴ See <https://santabarbaraca.gov/things-do/waterfront/cruise-ship-visits>

1 resolved this very issue in United States v. Allied Towing Corp., 602
2 F.2d 612 (4th Cir. 1979). In that case, Allied Towing was convicted
3 of seaman's manslaughter when two employees died in an explosion
4 while welding a tank barge (in violation of Coast Guard regulations)
5 on the Elizabeth River. Id. at 613. Allied Towing appealed the
6 district court's denial of its motion to dismiss for lack of
7 jurisdiction. Id. The government acknowledged that the Elizabeth
8 River was within Virginia's jurisdiction, but argued that the federal
9 government still retains admiralty jurisdiction over the seaman's
10 manslaughter offense. Id. at 614. The Fourth Circuit agreed,
11 holding that 18 U.S.C. § 1115 "reaches homicides committed anywhere
12 within the general admiralty jurisdiction of the federal courts. We
13 therefore hold that the district court had jurisdiction to convict
14 Allied for violating section 1115 on the navigable waters of the
15 Elizabeth River." Id. at 615; see also Hoopengartner v. United
16 States, 270 F.2d 465, 471 (6th Cir. 1959) ("The fact that an offense
17 can be prosecuted at common law in a state court does not oust the
18 maritime jurisdiction of a federal court.").

19 As with Allied Towing, although the State of California may have
20 concurrent jurisdiction over certain areas near its coastline and
21 offshore islands in the Pacific Ocean, the federal government still
22 has admiralty jurisdiction to prosecute seaman's manslaughter
23 violations in the marine region identified in Exhibit 1.

24 **III. CONCLUSION**

25 For the foregoing reasons, the government respectfully requests
26 that the Court make a pre-trial finding of legislative fact that the
27 marine region identified in Exhibit 1 is within the admiralty
28 jurisdiction of the United States.